

# DRAFT TECHNICAL MEMORANDUM #1

## Montana BART Rule Exemption Process

February 16, 2006

### FEDERAL RULE BART EXEMPTION

The Regional Haze Visibility Rules for BART, 40 CFR 308, et. al. (RHR), contain a provision included as a result of a Circuit Court challenge to the RHR. The court in *American Corn Growers Ass'n v. EPA*, 291 F.3d 1 (D.C. Cir. 2002), criticized EPA for improperly infringing on a state's discretion to determine which BART-eligible sources should be subject to BART. The court stated, "[The RHR] does not provide *the states* with a means by which they can exempt sources based on individual contribution determinations (emphasis in original). In response, EPA created a categorical exemption based on PTE for NO<sub>x</sub> and SO<sub>2</sub> and actual emissions of PM-10 at a BART-eligible source and promulgated the provision at 40 CFR 51.308(e)(1)(ii)(C).

The three references to BART exemptions are outlined below. Montana DEQ is following the process for exemption outlined in Appendix Y to the federal BART rule.

**(A) 40 CFR 51.308(e)(1)(ii)(C) Exception** - A State is not required to make a determination for BART for SO<sub>2</sub> or NO<sub>x</sub> if a BART-eligible source has the potential to emit (PTE) less than 40 tons per year (tpy) of such pollutant(s), or for PM-10 if a BART-eligible source actually emits less than 15 tpy of such pollutant.

**(B) Federal Register Statement (70 FR 39104 at 39116)** - The exemption provision was intended as a categorical exemption from the requirements of the statute. In the absence of such an exemption, "[i]f a state were to undertake a BART analysis for emissions of less than 40 tons of SO<sub>2</sub> or NO<sub>x</sub> or 15 tons of PM-10, from a source, it is unlikely to result in anything but a trivial improvement in visibility."

**(C) Appendix Y Guidelines** - Appendix Y Guidelines approach the BART process in three primary steps, each of which is further divided into more detailed sub-steps in the Guidelines. The primary steps are:

1. Identification of BART-eligible sources
2. Identification of sources subject to BART (not applicable to determining exemption at 40 CFR 51.308(e)(1)(ii)(C))
3. The BART determination process (not applicable to determining exemption at 40 CFR 51.308(e)(1)(ii)(C))

Step 1 describes the criteria and analyses used to affirmatively identify BART-eligible sources. Steps 2 and 3 do not involve the BART exemption process and are not described in this memo.

Step 1a: Identify potential BART-eligible sources at a facility

- Identify those emission units (EU) that belong to one or more of 26 source categories.
- Identify EUs constructed or reconstructed within the 8/7/62 – 8/7/77 time period.
- Compare the PTE at these EUs for SO<sub>2</sub>, NO<sub>x</sub>, and PM-10 to 250 tpy cutoff.

**NOTE:** The collection of EUs meeting the above criteria comprises a "BART-eligible source."

Step 1b: Identify BART-eligible sources exempted under de minimis

- Combine the emissions of SO<sub>2</sub>, NO<sub>x</sub>, or PM-10 on a pollutant specific basis from all of the BART-eligible EUs at a BART-eligible source.
- Compare combined emissions to the pollutant exemption levels (actual PM-10 < 15 tons or PTE of SO<sub>2</sub> or NO<sub>x</sub> < 40 tpy) and BART-eligible units less than the de minimis thresholds may be exempted from further review.

**BART-Eligible Source Determination Examples:** Assume that the hypothetical EUs below in Figure 1 meet the category and date criteria tests. The EUs at stationary sources X and Y exceed 250 tpy PTE for a regulated, visibility-impairing pollutant. Therefore, the collection of EUs at both stationary source X and stationary source Y comprise BART-eligible sources. However, stationary source Z is not a BART-eligible source because even though the combined total of plant-wide visibility-impairing pollutants exceeds 250 tpy PTE, there is no single pollutant that exceeds the 250 tpy PTE threshold.

**De Minimis BART Exemption Examples:** For those stationary sources that exceed PTE levels and are characterized as BART-eligible, identify, on a plant-wide basis, whether PTE of SO<sub>2</sub>, NO<sub>x</sub>, or actual PM<sub>10</sub> emissions equal or exceed the levels set forth in NEW RULE III(1), i.e., PTE less than 40 tpy of SO<sub>2</sub> or NO<sub>x</sub> or actual emissions of less than 15 tons PM-10. Exclude those EUs on a categorical basis, i.e., no need to make a finding regarding whether the emissions cause or contribute to visibility impairment. Based on the BART exemption test, stationary source Y is not subject to BART for PM.

Stationary Source "X"	Stationary Source "Y"	Stationary Source "Z"
EU A = 200 tpy SO <sub>2</sub> 150 tpy NO <sub>x</sub> 25 tpy PM (PTE.) 10 tons PM (act.)  EU B = 100 tpy SO <sub>2</sub> 150 tpy NO <sub>x</sub> 20 tpy PM (PTE) 6 tons PM (act.)	EU C = 200 tpy SO <sub>2</sub> 150 tpy NO <sub>x</sub> 15 tpy PM (PTE) 10 tons PM (act.)  EU D = 100 tpy SO <sub>2</sub> 150 tpy NO <sub>x</sub> 12 tpy PM (PTE) 4 tons PM (act.)	EU E = 150 tpy SO <sub>2</sub> 150 tpy NO <sub>x</sub> 100 tpy PM (PTE) 85 tons PM (act.)  EU F = 50 tpy SO <sub>2</sub> 75 tpy NO <sub>x</sub> 125 tpy PM (PTE) 110 tons PM (act.)
<b><u>TOTALS</u></b> 300 tpy SO <sub>2</sub> 300 tpy NO <sub>x</sub> 45 tpy PM (PTE) 16 tons PM (act.)	<b><u>TOTALS</u></b> 300 tpy SO <sub>2</sub> 300 tpy NO <sub>x</sub> 17 tpy PM (PTE) 14 tons PM (act.)	<b><u>TOTALS</u></b> 200 tpy SO <sub>2</sub> 225 tpy NO <sub>x</sub> 225 tpy PM (PTE) 195 tons PM (act.)

**FIGURE 1. BART-Eligible Source Determination & BART De Minimis Exemption Examples**